

Tax Authorities at Jaipur and that the respondent No.3 got his education at Jaipur. On the basis of the above, it was contended that the respondent No.3 is not a resident of the District Tonk.

The Selection Committee for the dealership found that the respondent No.3 was a resident of District Tonk and also the complaint which was filed by the petitioner before the Dealer Selection Board on the aforesaid ground was also rejected and it was held that the respondent No.3 is a resident of District Tonk. It is on the basis of the above that the petitioner has challenged the candidature and eligibility of the respondent No.3 for being selected for the retail outlet in the District Tonk.

Replies have been filed by the Corporation as well as by the respondent No.3. The respondent No.3 in his reply has submitted in para 8 as follows:-

"8. That the contents of para No.8 of the writ petition are not admitted as stated. The answering respondents is the permanent resident of District Tonk and the answering respondent is residing at Tonk and his birth place is village Palli where the agriculture land in the name of his father is their which is ancestral agriculture land and answering respondent looks after the said land. The contention of petitioner that answering respondent is that permanent resident of Sanganer District Jaipur is totally incorrect.

That the father of the answering respondent Sh.Dinesh Kumar is a government employee was posted U.D.C. in Animal Husbandry Department and was transferred to Jaipur in the month of July, 1994. On his transfer, the answering respondent's father started living in Jaipur in a rental house and to get his ration card transferred from Tonk to Jaipur, he got a ration card prepared. Only on the

basis of residing of answering respondent father in Jaipur it cannot be said that the answering respondent is permanent resident of District Jaipur.

That in the year 1995, the government employees prepared a voter list in which the answering respondent was also added on the basis of their own survey. Name of the answering respondent is nowhere in the voter list of Jaipur prior to 1995 and he has never participated in the voting on the basis of the voter list.

That the address given by the answering respondent's father in the incomes for the year 1999-2000 was of Sanganer because he was a government employee posted in the Animal Husbandry Department and was residing at Sanganer. The answering respondent is although dependent to his own father but was residing at his village Palli District Tonk and looking after the agriculture land.

It is also incorrect that the answering respondent obtained the ration card from village panchayat Palli District Tonk on 1.4.2000 in order to prepare an evidence of being resident of Palli. It is pertinent to mention here that the advertisement for the retail outlet Dealership was published in the Newspaper and received on 1.4.2000 and hence, it cannot be said that the ration card was received to prepare evidence of being resident of Palli for the purpose allotment of Retail outlet Dealership. The answering respondent has also submitted certificate of the competent authority with regard to his being permanent resident of District Tonk. The contents of reply of notice dated 26.7.2001 by the sarpanch is also factually incorrect."

In para 9, it has has further been stated as follows:-

"9. That the contents of para No.9 of the writ petition that no admitted as stated there are 3 dependents on the answering respondent father. They are No.1 answering respondent No.2 Kumari Archana No.3 Kumari Pinki and the answering respondent's father retired from the Government service on 12th

January 2000 at the time of submitting the application for the Retail outlay dealership, the answering respondent's father was earning only Rs.4000/- per month as a pension.

That the following agriculture land is their in the name of answering respondent's father No.(1) Gram Palli, 4 Bigha and 10 Biswa Barani No.(ii) Roopwas 1¼ Bigha Chahi and 1/9 Bigha Barani.

In the last 3 or 4 years because of poor rain no agriculture income could be earned from the above agriculture land. The Government of Rajasthan has also declared the village Palli and Roopwas as drought areas in the year 1991 to 2001. Copy of the certificate issued by the Block Development Officer Panchayat Samiti, Niwai District Tonk with regard to declaration of drought area for village Palli and Roopwas is enclosed and marked as ANNEXURE R-2.

It is also wrong to say that the father of answering respondent earned profit of about Rs.50,000/- from the rent from the house situated at Tonk. There is small house owned by the answering respondent's father situated at Tonk but same has not been given on rent to any person and therefore, no income has been earned from the same. Hence, the contention of the petitioner that the gross income of the answering respondent is more than Rs.2,00,000/- is totally incorrect and without any evidence."

Learned counsel for the petitioner in support of his case has relied upon a judgment of the Hon'ble Supreme Court in the case of Bhagwan Dass and Another Vs. Kamal Abrol and Others reported in 2005 (11) SCC 66. Stress has been laid on the aforesaid judgment on the basis of the findings recorded in para 12 of the said report.

In the facts and circumstances of the present case, it is clearly been borne out that the petitioner was born in the village Palli in District Tonk where the ancestral house and property is situated and the father of the petitioner is a

permanent resident of the village Palli in District Tonk and it is only on account of his father being in government service having been posted in various places and has ultimately come to be posted at Jaipur in the year 1994 where the respondent No.3 along with his father is living in a rented premises at Sanganer located at Jaipur. On account of the petitioner's father being in government service and posted at Jaipur, he has taken a ration card for the aforesaid purpose and also got a gas connection accordingly in which the name of the petitioner is included along with his parents. Merely on the basis of the fact that the father of the respondent No.3 is posted at Jaipur and his parents having obtained the ration card and the respondent No.3 having obtained his education at Jaipur while residing with his parents, it cannot be said that the petitioner is a resident of Jaipur and not of Palli in District Tonk. The fact remains that the roots of the family of respondent No.3 lie in the village Palli, District Tonk and they have their agricultural land and ancestral properties there at village Palli, District Tonk. The family of the respondent No.3 are looking after the agricultural land in the village Palli, District Tonk. In the facts and circumstances, therefore, it cannot be held that the petitioner is not a resident of District Tonk.

It may be noticed here that the residential requirement in the Notification has to be seen in the light of the permanent residence, as opposed to the present residence. The present residence of the respondent No.3 is on account of the fact that he was residing with his father while he is in government service and pursued his education at Jaipur on account of the aforesaid fact that his father was posted at Jaipur. The children of government employees necessarily reside with their parents and it is quite natural for them to pursue

their education where their parents are posted. In several cases, the government servants are not posted in their Home District and in some services there is even an embargo for such employees/officers to be posted in their home district, therefore, to deprive such persons of their rights based upon the present residence on account of the transfer of their parents while in government service would be a travesty of justice.

Persons in various government jobs both civil and military services and while being employed in public and private sectors as well as posted at various places in the country along with their families reside at places away from their ancestral homes. To deny these persons and their families the status of being residents of their parental home or native place on the basis of their present residence without the person concerned having consciously decided to abandon the ancestral home and reside permanently at another location would in my considered opinion not be the correct approach in dealing with the present situation.

In Bhagwan Dass's case, their Lordships of the Hon'ble Supreme Court have clearly laid down that "what is required to fulfill the eligibility criterion of residence is that the person should be a *de facto* resident and not have a mere connection with the place."

In the instant case, the selected candidate, as submitted in his reply, is engaged in the occupation of agriculture on the ancestral land which is situated at village Palli in District Tonk which is their ancestral home. In that view of the matter, the selected candidate would in fact be considered to be the *de facto resident* of village where he is carrying on

the occupation of agriculture. It cannot, therefore, be said that the selected candidate had a mere remote connection with the place of his ancestral residence in village Palli in District Tonk.

In the case before the Hon'ble Supreme Court of Bhagwan Dass and Another Vs. Kamal Abrol and Others (supra) the candidate who was selected was residing at Mandi with her husband and therefore it was held that husband of the petitioner had some ancestral property with some remote connection with the District Kangra which would not make him a resident of Kangra, whereas she was actually residing at Mandi with her husband. The facts in that case, in my opinion, do not apply to the facts and circumstances of the case. The fact that the petitioner who was looking after the agricultural land and pursuing agriculture as occupation, as per the averments made in the reply to the writ petition, in village Palli, District Tonk where the agricultural land and ancestral home of the respondent No.3 is situated goes to show that the respondent No.3 was in fact a resident of village Palli, District Tonk and the respondents have rightly held him to be a resident of District Tonk.

In the light of the above, I find no merit in the present writ petition. In the facts and circumstances of the present, the writ petition as well as the stay application stand dismissed.

(DALIP SINGH), J.

Solanki DS, Jr.P.A.